

Complaint Exhibit B

SPARACINO

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Via Certified Mail

May 14, 2019

FOIA Appeals Officer
Bureau for Management
Director, Office of Management Services
U.S. Agency for International Development
Room 2.12-010, RRB
Washington, DC 20523-4601
FAX: (202) 216-3369

Re: Freedom of Information Act Appeal – Request F-00015-19

Dear FOIA Appeals Officer,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”).

My law firm represents over 1,200 American veterans and civilians, and their families (including over 180 Gold Star Families), in connection with deaths and injuries caused by terrorists in Iraq. On behalf of our clients, we have filed a lawsuit against pharmaceutical companies that contracted with the Iraqi Ministry of Health, alleging that they funded terrorists who killed or wounded thousands of Americans in Iraq. FOIA request F-00015-19 is part of our investigation of these allegations, on behalf of our clients who have made great sacrifices in connection with America’s involvement with Iraq.

Regarding FOIA request F-00015-19, the chronology of relevant events follows:

- On October 30, 2018, my colleague Dustin Lee submitted FOIA request F-00015-19 (see Exhibit 1; hereinafter “Request”) to USAID via email.
 - The Request included one exhibit (**Exhibit A**), the title pages and Table of Contents for a report entitled Pharmaceutical and Medical Products in Iraq (“Report”). Id. at pgs. 4-8. The Louis Berger Group, Inc. and The Services Group produced the Report for USAID’s review on or about April 17, 2006. Id. at pg. 5. The Report’s Table of Contents listed five appendices, labeled “Appendix A” thru “Appendix E.” Id. at pg. 8 (highlights added).
 - In response to a prior FOIA request (F-00056-18), on June 7, 2018, Jason Towns of USAID produced *most* of the Report to my colleague, Sarah Allen. That production, however, inexplicably omitted the five appendices. Due to this error, and pursuant to Mr. Towns’ advice, the Request (**F-00015-19**) explicitly sought the five appendices. Id. at pg. 1.

- On October 30, 2018, approximately two hours after Mr. Lee submitted the Request, Qianna Norman, a FOIA Specialist, emailed Mr. Lee, confirming receipt of the Request, including its exhibit, both of which were attached to her email. Ms. Norman also assigned a “tracking number” for the Request (F-00015-19). Ms. Norman explained that USAID was “in the process of perfecting your request,” and that “[o]nce your request is perfected, you will be notified of the FOIA Specialist assigned to process your case.”
- On October 31, 2018, Ms. Norman emailed Mr. Lee again, informing him that the Request “has been assigned to Amira Moore, FOIA Specialist.”
- After months of silence, on March 5, 2019, Ms. Allen emailed Mr. Towns and reminded him that: (1) it was his recommendation that we submit a new FOIA request specifically seeking the five appendices, as this – according to Mr. Towns – would be the fastest method of obtaining them; and (2) the appendices should have been included with the production responding to FOIA request F-00056-18. Ms. Allen asked Mr. Towns about the status of the Request (F-00015-19) and when we could expect production of the five appendices. Mr. Towns never responded to Ms. Allen.
- As of the date of this appeal, neither Mr. Lee, Ms. Allen, nor anyone else at Sparacino PLLC has received any communications, documents, or other response from Ms. Norman, Ms. Moore, Mr. Towns, or any other USAID representative regarding the Request since Ms. Norman’s October 31, 2018 email.

USAID’s failure to provide any substantive response to the Request is clearly inconsistent with the requirements of FOIA. The statute required USAID to conduct searches for the documents we requested and provide a “determination” within 20 days of receipt of our FOIA request.¹ USAID has missed that deadline by nearly half a year. A proper “determination” would “inform the requester of the scope of the documents [the agency] will produce and the exemptions it will claim with respect to any withheld documents.”² Thus, as the D.C. Circuit Court of Appeals has explained, a “in order to make a ‘determination’ . . . the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the

¹ See 5 U.S.C. § 552(a)(6)(A)(i).

² See *Citizens for Responsibility & Ethics in Washington v. Fed. Elec. Comm’n.*, 711 F.3d 180, 185-86 (D.C. Cir. 2013) (“CREW argues that, in order to make a ‘determination’ within the meaning of Section 552(a)(6)(A)(i), an agency need not go so far as to produce the responsive documents but it must at least inform the requester of the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents. By contrast, the FEC contends that, in order to make a ‘determination,’ an agency needs simply to express a future intention to produce non-exempt documents and claim exemptions. That question has never been resolved in this Court. We agree with CREW’s reading of the statute. The statute requires that, within the relevant time period, an agency must determine whether to comply with a request—that is, whether a requester will receive all the documents the requester seeks. It is not enough that, within the relevant time period, the agency simply decide to later decide. Therefore, within the relevant time period, the agency must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.”).

requester that it can appeal whatever portion of the 'determination' is adverse."³ USAID has provided no indication of completing any of these steps. Indeed, USAID has been totally silent with respect to the Request since accepting it in October 2018.

We are thus writing to appeal the failure of USAID to produce responsive documents, or provide some other determination of our FOIA request, in a timely manner. In the event this appeal is denied, you are required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial and the procedures required to invoke judicial assistance in this matter. *See* 5 U.S.C. § 552(a)(6)(ii). We reserve our rights under FOIA to seek judicial review, including the award of attorney's fees, if this appeal is denied or your response is not forthcoming within 20 working days.

Thank you for your time and attention to this matter. If you have any questions, or believe discussion of this matter would be beneficial, please contact me directly at patrick.mcmullen@sparacinopllc.com or (202) 590-0530.

Sincerely,



Patrick McMullen
Sparacino PLLC

Enclosures

³ *See id.* at 188.

EXHIBIT 1

SPARACINO

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October 30, 2018

By Electronic Mail

U.S. Agency for International Development
M/MS/IRD, Suite 207C RRB
1300 Pennsylvania Avenue, NW
Washington, DC 20523-2701
Email: foia@usaid.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

My law firm represents over 350 American veterans and civilians, and their families (including over 50 Gold Star Families), in connection with deaths and injuries caused by terrorists in Iraq. On behalf of our clients, we have filed a lawsuit against pharmaceutical and medical device companies that contracted with the Iraqi Ministry of Health, alleging that the companies funded terrorists who killed or wounded thousands of Americans in Iraq. As part of our investigation of these allegations, and on behalf of our clients who have made great sacrifices in connection with America's involvement with Iraq, we submit this request under the Freedom of Information Act, 5 U.S.C. §§ 552, *et seq.* ("FOIA") for copies of the records described below.

Background

On or about April 17, 2006, The Louis Berger Group, Inc. and The Services Group (TSG) produced a report for the USAID's review entitled, Pharmaceutical and Medical Products in Iraq ("Report"). See corresponding title pages and table of contents, attached hereto as Exhibit A. Preparation of the Report was funded by USAID Contract No. 267-C-00-04-00435-00. *Id.* at pg. 2. USAID published the Report one year later, on or about April 17, 2007, under the heading Iraq Private Sector Growth and Employment Generation. *Id.* at pg. 1.

On or about June 7, 2018, pursuant to a prior FOIA request (reference no. F-00056-18), USAID produced sixty-seven (67) pages of the Report. USAID did not produce, and has not produced, the five appendices, labeled "Appendix A" thru "Appendix E," of the Report. *Id.* at pg. 5 (highlights added). **These appendices are the subject of this FOIA request.**

Records Requested

All five (5) appendices, i.e. "Appendix A" thru "Appendix E," of the Report, i.e. Pharmaceutical and Medical Products in Iraq, in their entirety.

SPARACINO
PLLC

The relevant period for this request is: **January 1, 2005 through December 31, 2007.**

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, **please produce records electronically in PDF format.** We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs. Our request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, discussions, and any attachments to such records. If any of this information is currently classified or restricted distribution, we ask that you submit the records for declassification in accordance with Executive Order 13526, and all other relevant regulations, policies and orders governing declassification of documents.

For any responsive records, or portions of records, you deem covered by any applicable FOIA exemption, 5 U.S.C. § 552(b) prescribes the appropriate process: “[a]ny reasonably segregable portion of a record shall be provided...after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.”

I am willing to pay fees for this request up to a maximum of **\$200**. If the fees for this request exceed that amount, please inform me first.

Thank you for addressing my request. Please do not hesitate to reach out to me by phone or email with any questions or concerns about this request, and please mail responsive materials to the address in the letterhead above.

Sincerely,



Dustin M. Lee
dustin.lee@sparacinopllc.com

Enclosure

Exhibit A



USAID | IRAQ
FROM THE AMERICAN PEOPLE

IRAQ PRIVATE SECTOR GROWTH AND EMPLOYMENT GENERATION

April 17, 2007

Pharmaceutical and Medical Products in Iraq



This publication was produced for review by the United States Agency for International Development. It was prepared by the joint venture partnership of The Louis Berger Group / The Services Group under Contract # 267-C-00-04-00435-00



April 17, 2006

Pharmaceutical and Medical Products in Iraq

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

The IRAQ IZDIHAR project is funded by the United States Agency for International Development (USAID) and implemented by the joint venture partnership of:

THE **Louis Berger Group, INC.**
Engineers Planners Scientists Economists



TSG THE SERVICES GROUP
International Economic Consulting

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